

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EARL FELTON CRAGO JR.,
Petitioner.

No. 2 CA-CR 2014-0379-PR
Filed February 25, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Cochise County

No. CR94000471

The Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Earl F. Crago Jr., Buckeye
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 Earl Crago seeks review of the trial court's orders denying his successive and untimely petition for post-conviction relief and motion for rehearing filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those rulings unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Crago has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Crago was convicted of first-degree murder and sentenced to life in prison without the possibility of release for twenty-five years. We affirmed Crago's conviction and sentence on appeal, denied relief in part on a consolidated petition for review of the denial of his first petition for post-conviction relief, and remanded for an evidentiary hearing on two claims of ineffective assistance of counsel. *State v. Crago*, Nos. 2 CA-CR 95-0488, 2 CA-CR 98-0230-PR (consolidated) (memorandum decision filed Mar. 18, 1999). We subsequently denied relief on Crago's petition for review of the denial of post-conviction relief after the evidentiary hearing. *State v. Crago*, No. 2 CA-CR 00-0259-PR (memorandum decision filed Mar. 13, 2001). We also denied relief on five more petitions for review of the denial of post-conviction relief. *State v. Crago*, No. 2 CA-CR 2013-0402-PR (memorandum decision filed Mar. 11, 2014); *State v. Crago*, No. 2 CA-CR 2011-0162-PR (memorandum decision filed Sept. 9, 2011); *State v. Crago*, No. 2 CA-CR 2008-0396-PR (memorandum decision filed May 12, 2009); *State v. Crago*, No. 2 CA-CR 2004-0224-PR (decision order filed Mar. 29, 2005); *State v. Crago*, No. 2 CA-CR 01-0381-PR (memorandum decision filed Feb. 19, 2002).

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¶3 In this current proceeding, Crago claims he recently received an anonymous letter from an employee of the Cochise County Attorney indicating that an unknown person had found a “note” in his file. According to the letter, the note stated that DNA¹ evidence discovered in his vehicle did not match the victim’s DNA, but that Crago “doesn’t know, go ahead and tell the jury that the victim’s blood was found in the defendant’s vehicle.” He also asserted that his attorney told him the state found the victim’s blood in his vehicle and recommended that he claim he killed the victim in self-defense. Crago maintained the note constituted newly discovered evidence and asserted he was actually innocent of the offense. The trial court summarily denied relief, as well as Crago’s subsequent motion for rehearing. This petition for review followed.

¶4 On review, Crago first asserts the trial court failed to address the state’s “confession” that it had not disclosed the DNA test results when requested. But Crago does not identify an admission by the state or evidence contradicting the court’s determination that the only DNA tests were completed after trial. Additionally, there is no indication he requested DNA test results until after trial. And, although Crago insists the court made findings “contradicted by the record,” he identifies no such findings, instead choosing to incorporate by reference his motion for rehearing. That procedure is not permitted by our rules, and we therefore do not address that argument. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991).

¶5 We also reject Crago’s additional contentions the trial court applied the wrong legal standard to his claims and should have conducted an evidentiary hearing. We have reviewed the court’s rulings and conclude it correctly and thoroughly addressed each of Crago’s arguments, and therefore adopt those rulings. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Finally, we reject Crago’s argument that the court erred in denying his request for appointed counsel. Crago is not entitled

¹Deoxyribonucleic acid.

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to counsel in a successive, untimely proceeding like this one, and he has not cited any authority suggesting the court abused its discretion in declining to appoint counsel here. *See* Ariz. R. Crim. P. 32.4(c)(2); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review).

¶7 For these reasons, although the petition for review is granted, relief is denied.